HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 8776 OF 2006

DATED: 26.4.2006

Between:

P. Pullaiah

… Petitioner

and

The Government of A.P., represented by its

Principal Secretary, Revenue (Endts.IV)

Department, Secretariat and others

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.8776 OF 2006

ORAL ORDER:

The petitioner is admittedly an encroacher of an extent of 6.250 cents in Sy.Nos. 450/AB, 451/AB and 452/AB in Vinayaka Nagar, Proddutur Town, Kadapa District, a land belonging to the 3rd respondent temple. The petitioner claims to have been in possession as an encroacher since the past 60 years. Some time in the year 1987, the Revenue Divisional Officer, Jammalamadugu wrote to the District Collect, Kadapa stating that the Mandal Revenue Officer, Proddatur had reported that certain lands belonging to the 3rd respondent-Devasthanam were in possession of about 13 encroachers for over 40 years; that encroachers belong to the economically weaker sections; that the MRO had recommended for fixation of the land value at Rs.5,000/- per cent and that as these persons are in encroached possession of the lands with the tacit approval of the trustee of the temple, the matter may be considered appropriately.

It appears that the then Chairman of the trust board had also addressed the District Collector, Kadapa, informing the Collector that the trust board had resolved to sell the land at Rs.5,000/- per cent to the 13 families who were in possession of the Devasthanam site, as encroachers. Thereafter, the in-charge Commissioner of the Endowments Department, again in the year 1987, addressed the State Government, informing the State Government that the Trust Board had expressed its willingness by a resolution to alienate the lands in favour of the encroachers and that the matter be referred to the Collector, Kadapa, for verification. Nothing happened thereafter.

The 3rd respondent-temple through its Executive Officer appears to have

complained to the Assistant Commissioner, Endowments Department, Kadapa, regarding the encroachment of these lands and soliciting action under Section 83 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'), in particular in respect of the encroachment by the petitioner. Thereupon, proceedings under Section 83 of the Act were initiated and by the impugned order dated 18.3.2006 in O.A.No.49 of 2003, in purported exercise of powers under Section 83 of the Act, the 2nd respondent determined the petitioner to be an encroacher, directed him to vacate the encroached extent of the property belonging to the Devasthanam and on failure directed that he be evicted in accordance with law including as provided under Section 84 (1) of the Act.

As against the order of the 2nd respondent under Section 83 of the Act, the petitioner has available revisional remedy to the Commissioner of Endowments under Section 92 of the Act. It is however submitted by Sri L.J. Veera Reddy, learned counsel for the petitioner, that the revisional powers conferred on the Commissioner under Section 92 of the Act have been delegated to the Regional Joint Commissioner of Endowments, Tirupati, under Section 9 of the Act. It is also submitted that the current incumbent of the office of the Regional Joint Commissioner of Endowments, Tirupati, is none other than the very officer who had passed the impugned order dated 18.3.2006 exercising powers as the competent authority/Deputy Commissioner at that point of time.

The petitioner suggests and rightly that there cannot be an appeal to the very author of the order to be appealed against. Responding to this submission, the learned Government Pleader for Endowments states and rightly that the statutory conferral of power is on the Commissioner of Endowments and it is that power which has been delegated to the Regional Joint Commissioner of Endowments under the delegation orders made by the State Government. What the learned Government Pleader submits is that in a situation like the present when the present incumbent of

the office of the Regional Joint Commissioner of Endowments is incompetent to hear a revision, on account of being the primary authority himself, then the Commissioner himself could be directed to take up the revision preferred under Section 92 of the Act.

In the aforesaid circumstances, the writ petition is disposed of as requested by the learned counsel for the petitioner. The petitioner may prefer a revision under Section 92 of the Act if aggrieved and so desired against the order dated 18.3.2006 in O.A.No.49 of 2003 of the 2nd respondent. On such revision being filed to the Commissioner of Endowments, the Commissioner of Endowments shall himself take up the revision and determine the same expeditiously, and in any event within a period of three months from the date of receipt of such revision. Nothing stated in this order shall be construed as an expression by this court on the merits of the petitioner's case. The revisional authority, exercising powers under Section 92 of the Act, shall consider the revision independently and in accordance with law and shall pass a reasoned order on the merits of the revision to be preferred by the petitioner.

The writ petition is disposed of at the stage of admission. There shall be no order as to costs.

GODA RAGHURAM, J

Date: 26.4.2006

CVM